

REMARKS

This Amendment is being filed in response to the Office Action mailed October 16, 2008, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the remarks to follow are respectfully requested.

Claims 1-3 and 5-10 remain in this application, where claim 1 is independent.

In the Office Action, claims 1-6 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 and 8 of a copending Application No. 10/509,455 in view of U.S. Patent Application Publication No. 2001/0016242 in view of (Miyamoto). The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is also respectfully traversed. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Office Action, 1-3 and 5-7 are rejected under 35 U.S.C.

\$103(a) as allegedly unpatentable over U.S. Patent Application Publication No. 2001/0016242 (Miyamoto) in view of U.S. Patent No. 4,967,192 (Kaneko) and U.S. Patent Application Publication No. 2004/0156294 (Watanabe). Claims 8-10 are rejected under 35 U.S.C. \$103(a) as allegedly unpatentable over Miyamoto in view of Kaneko, Watanabe and U.S. Patent Application Publication No. 2004/0043254 (Wisnudel). It is respectfully submitted that claims 1-3 and 5-10 are patentable over Miyamoto, Kaneko, Watanabe and Wisnudel for at least the following reasons.

On page 9 of the Office Action, last paragraph, the Examiner correctly noted that Miyamoto and Kaneko do not disclose or suggest several features of claim 1, such as third and fourth layer stacks. Watanabe is cited in an attempt to remedy the deficiencies in Miyamoto and Kaneko.

It is respectfully submitted that Watanabe is not prior art to the present application. The present application has an effective filing date of April 2, 2002, which is before the Watanabe publication date of August 12, 2004, as well as before the publication date of October 31, 2002 of the Watanabe PCT Publication WO 02/086873 A1, PCT Application No. PCT/JP02/03406, published in Japanese. As the effective filing date of the present

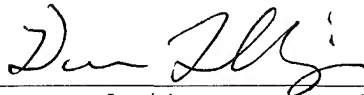
application of April 2, 2002 is before the Watanabe publication date of August 12, 2004 (as well as before the Watanabe PCT Publication date of October 31, 2002), Watanabe is not available as prior art with regard to the present application.

Accordingly, it is respectfully submitted that independent claim 1 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-3 and 5-10 should also be allowed at least based on their dependence from amended independent claim 1.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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